

Hawaiian Gazette Supplement, Dec. 27, 1882.

Supreme Court in Chambers, Dec. 21st.

HAROLD LIND KEE & CO., vs. JUDGE BUCKINGTON AND MARSHAL PARKS.

The plaintiffs in this case claimed \$500 damages of the defendants for issuing and authorizing the service of a search warrant upon their premises.

Mr. Buckington appeared for himself, Mr. Preston for Mr. Parks.

The record of the testimony in the case of the same plaintiffs against officers Marsh and Oadi was agreed upon as the evidence to be taken in this case. The substance of the argument of Mr. Hartwell, counsel for the plaintiffs was as follows:

1. The Constitution, Art. 1, prohibits all searches or seizures unless for probable cause, supported by oath and describing the place to be searched and the person to be seized. This complaint does not mention the name of one of those plaintiffs, nor their firm name. It does not describe the place as in Honolulu or on the island of Oahu or elsewhere, simply "at Hotel No. 21."

2. By the provisions of Art. 1 of the Penal Code, no search warrant can issue unless some one is accused of a criminal offense. This complaint charges no criminal offense against any of those plaintiffs or any one else. The only basis for the warrant is that "sundry opium is concealed on the premises of Lo Kee, etc., at No. 21 Hotel Street." If this is a basis for a seizure and search, no home-holders in this Kingdom are exempt from arrests and seizures. There must be a charge that the parties charged have done some criminal act, or been privy to it.

3. By Sec. 304 of the Civil Code, no warrant can issue but on affidavit of personal knowledge or personal belief. In this case the officer who makes the complaint simply deposes that he "suspects" and has cause to suspect that sundry opium is concealed, etc. Suspicion is not and ought not to be a basis for a warrant issued on suspicion, was against Marsh & Oadi at common law, and was no justification to court or officer.

4. This warrant is illegal, void and a process unknown to the law. The Magistrate had no jurisdiction over those plaintiffs by reason of the complaint, and all searches and seizures under it are illegal, making all concerned in issuing or serving or authorizing the service of the writ liable in damages to the parties injuriously affected. (Citing numerous American and English decisions and texts.)

5. The Marshal is in the eye of the law present with his deputies and officers when they serve processes, and is liable for their acts. He should see that they are properly instructed in these matters. The plaintiffs counsel said he believed that the execution of the warrant was the act of the Marshal, and that the Marshal was the one who was responsible for the damages to the parties injuriously affected.

Mr. Hickerton claimed that a Magistrate has a right to issue a warrant in deciding whether a proper basis is laid for issuing a warrant, and that the statute required him to issue it if he was shown cause to suspect that parties were concealing or smoking opium on their premises. That the form of complaint and warrant in this case was a printed form which he did not prepare, but which was prepared by the authorities whom he must respect. That it would not be proper for him to call upon officers to show him all the facts on which they proposed to prosecute, as there would be danger of prejudicing a case. That no officer is compelled to disclose information on which he brings a criminal prosecution. Finally, that he had authorized the officers to delay the service of the process.

Mr. Preston for the Marshal, claimed that however it might be under the law of England, the Marshal here is not liable for the acts of the constables, the writ being expressly directed "To the Marshal, or his Deputies or any Constable."

The arguments were full of interest, and the Chief Justice took the case under advisement.

"Pity 'Tis 'Tis True."

The audience room of Fort St. Church was well filled last Wednesday evening (20th inst.) by members of the Temperance Society and a number of visitors, who were present to listen to the evidence expected to be presented in relation to the evil effects produced on the native element by the granting of free liquor laws. Mr. Amasa Pratt occupied the chair, Mr. H. Johnson, Secretary.

After prayer and an opening hymn Miss Frieson stated in a concise and clear manner her experience of the drunkenness prevalent amongst the natives, instancing that on every Saturday evening during the last month she had noticed over 300 natives more or less under the influence of liquor. Dr. Emerson said he was well acquainted with the law and knew how it operated and he was satisfied that it was working to the detriment of the native population. He had seen more natives under the influence of liquor during the last two months than during the last four years preceding. When he desired a boat to go to the island of Oahu, he found the harbor trip was rarely made without the production of a gin flask by the crewman and an invitation to "take a drink."

In the experience driven by natives, a search under the seats generally brought to light the accompanying gin bottle. Mr. A. Frank Cooke, from his experience amongst those "who go down to the sea in ships," could say with certainty that drunkenness was on the increase among the native element. Those who did not indulge before, now do. Families were more destitute now. Mr. Charles F. Cooke stated that his firm had been in the habit for years of trusting and assisting natives with lumber who desired to build. They do so no more, the cause being the imperviousness of the natives by the indulgence in liquor. Hon. A. Francis Judd, considered the liquor law as passed, a step backward. Head from a journal of his father's the Hon. G. P. Judd, the successful steps taken by a former Governor of Oahu, to introduce prohibition. He described the scenes witnessed by him on a late evening at the Commercial Saloon which he likened into a pandemonium and desired never again to witness the sights to be beheld. He thought the native element in the country districts or to the other islands had assisted greatly in reducing drunkenness in those places.

Mr. H. Davies thought that the existence of the free liquor traffic in Honolulu would tend to draw natives from the other islands, as it was now doing, and would thus degenerate the entire district. Mr. Johnson, the clerk of the Police Court stated that from the 18th of July to the 1st of October, 1882, there were 62 arrests for drunkenness alone; from the 1st of October to December 18th, there were 304 arrests for the same crime. During the same period (Oct. 1 to Dec. 18,) in 1881 there were 66 arrests for drunkenness. He considered that the statistics spoke for themselves.

Dr. Waitany presented letters, one of which from Waialua said, "Hon. S. R. Kai is here and everybody has had a big drink in consequence. More vigor is necessary in suppressing the illicit traffic in liquor." From conversations with butchers, dairy-men, and bakers, he learned that natives now purchased far less bread, low milk, and less meat than formerly. Letters were read from G. H. Dole of Kapaa, Judge Lyman of Hilo, J. D. Peria, Kauwala; H. Lyman, Hamakua; and James Alexander of Hilo, deprecating the prevalence of drunkenness amongst the natives, the illicit selling of liquor and the imperviousness and inactivity of the police. One of the audience, a member of Kaunaloa Church, stated that lately at Waialua, a man died, the body was placed in a coffin, a drunken native having entered on her premises late at night and she having forced him, ordered him to leave, following him to the gate of her residence. There she was surprised to see a police officer. On questioning the policeman, why he did not arrest the drunken man, she replied the answer that he was "instructed to arrest only those who were noisy or quarrelsome." Other speakers, including Rev. Dr. Dawson, also added their testimony regarding the evil effects noticeable among the natives by their indulgence in liquor.

Between the remarks of the various speakers a paraphrase of "Remember me, love, in your prayers," was sung by Mrs. Jordan, artist, assisted by Mrs. Johnson, Mr. W. W. Hall and Mr. C. E. Cooke and "Drives from Home," Mrs. Lowrie, artist, assisted by Mrs. Johnson and Mr. Hall both voices being well rendered. The usual hymn closed the exercises and the meeting adjourned.

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